

Message Text

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FOR SCS AND ARA/AND/B

E.O. 11652: N/A
TAGS: CASC, SNAR, BL
SUBJECT: U.S. PRISONERS; PERTINENT ASPECTS OF BOLIVIAN LAW

1. EMBASSY HAS RECEIVED FROM LEGAL ADVISERS QUINTANILLA AND TOVAR SIGNED MEMORANDUM COVERING BRIEFLY A NUMBER OF POINTS IN BOLIVIAN LAW ABOUT WHICH DEPARTMENT HAS INQUIRED FROM TIME TO TIME. WHILE SEVERAL VIEWS EXPRESSED BY LEGAL ADVISERS HAVE BEEN REPORTED SEPARATELY BY EMBASSY, WE BELIEVE FOLLOWING UNOFFICIAL TRANSLATION OF MEMORANDUM OF JUNE 17 MAY BE USEFUL.

2. A. IT IS NOTED THAT A SENTENCE OF ABSOLUTION SHOULD NOT BE CONFUSED WITH A SENTENCE WHICH DECLARES THE DEFENDANT INNOCENT. ABSOLUTION IS BASED ON THE LACK OF FULL PROOF AND, THEREFORE, IF NEW EVIDENCE WERE DISCOVERED THE CASE COULD BE REOPENED. IF THERE IS A DECLARATION OF INNOCENCE THEN THE CASE IS DEFINITELY CLOSED AND CONCLUDED.

B. SENTENCES GIVEN IN RECENT MONTHS IN THE NARCOTICS CASES HAVE VARIED FROM TWO TO MORE YEARS, WITHOUT BEING SEVERE. IN MANY CASES THE PERIOD OF IMPRISONMENT TO WHICH DEFENDANTS WERE SENTENCED HAS ALREADY BEEN SERVED. HOWEVER, THE FACT IS THAT THE REVIEW WHICH THE SUPERIOR AND SUPREME COURTS MUST CARRY OUT MAY RESULT IN AN INCREASE OR DECREASE OF THE PUNISHMENT
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BOTH WITH RESPECT TO THE TERM OF IMPRISONMENT AND THE AMOUNT OF THE FINE. FOR THIS REASON THE SENTENCED INDIVIDUAL MAY NOT BE RELEASED EVEN THOUGH AT THE PRESENT TIME THE INDIVIDUAL MAY HAVE ALREADY SERVED LONGER THAN THE SENTENCE IMPOSED BY THE LOWER COURT.

C. THE FINE WHICH IS PART OF THE PUNISHMENT IMPOSED IN SOME

SENTENCES IS PAID BY A DEPOSIT IN THE BOLIVIAN STATE BANK TO THE ORDER OF THE JUDGE. COURT COSTS ARE PAID IN THE SAME MANNER, BUT THEY WILL BE CALCULATED BY THE JUDGE ONLY AFTER THE CONCLUSION OF THE PROCEEDINGS. IT IS THEREFORE NOT POSSIBLE TO ESTIMATE COSTS AHEAD OF TIME, ALTHOUGH WE CONSIDER THAT THEY WILL BE VERY LOW.

D. WITH RESPECT TO THE SUPERVISION OF THE COURTS AND THEIR ACTIVITY, THE LAW OF JUDICIAL ORGANIZATION PROVIDES THAT THE SUPREME COURT DESIGNATE INSPECTING JUDGES, ASSIGNING TO THEM SPECIFIC DISTRICTS. IN THE SAME WAY, DISTRICT COURTS NAME JUDGES TO INSPECT LOWER JUDICIARY OFFICES. THESE INSPECTORS, BOTH IN THE CASE OF THE HIGHER AND LOWER COURTS, MAY NOT TAKE ANY MEASURES RELATED TO TRIALS OR ORDER THE EXCLUSION OR CHANGE OF ANY JUDGE IN ANY PROCEDURE. THEIR FUNCTIONS ARE SOLELY ADMINISTRATIVE.

E. A TRIAL OR PROCEDURE WHICH INCLUDES SEVERAL INDIVIDUALS WITH RESPECT TO THE SAME ACT, EVEN THOUGH THEIR PARTICIPATION MAY BE DIFFERENT (PERPETRATOR, INSTIGATOR, ACCOMPLICE, ACCESSORY, CONCEALING KNOWLEDGE OF) MAY NOT BE DIVIDED OR CONSIDERED SEPARATELY IN ORDER NOT TO BREAK THE UNITY OF THE PROCEDURE. BY THE SAME TOKEN, THE EXECUTION OF THE SENTENCES MAY NOT BE DIVIDED. IF PENALTIES UNDER DECREE LAW 14203 (THE NARCOTICS LAW) ARE APPLIED TO ONE OF THE INDIVIDUALS AND THE PROVISIONS OF THE PENAL CODE TO AN ACCOMPLICE, IT IS IMPOSSIBLE TO PREVENT UNCLASSIFIED

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THE SENTENCES OF ALL FROM BEING REVIEWED BY BOTH THE SUPERIOR AND SUPREME COURTS.

F. A JUDGE IS COMPETENT TO TAKE COGNIZANCE OF AND TRY A CASE EITHER WHEN THE ACT WAS DISCOVERED OR THE ACCUSED WAS CAPTURED OR FOUND WITHIN HIS TERRITORY. SUCH ACTION EXCLUDES ANY OTHER JUDGE OR AUTHORITY AND THE CASE CANNOT BE REMOVED FROM THE JUDGE'S JURISDICTION EXCEPT FOR REASONS SPECIFIED IN THE SAME PERTINENT LAW. WE ARE NOT AWARE THAT IN ANY OF THE CASES NOW BEING TRIED IN BOLIVIA (LA PAZ - COCHABAMBA - SANTA CRUZ) SUFFICIENT CAUSES HAVE BEEN SHOWN TO EXCUSE THE JUDGE FROM CONDUCTING THE TRIAL.

G. THE EXECUTION OF SENTENCES IMPOSED BY A BOLIVIAN JUDGE MUST BE CARRIED OUT WITHIN THE TERRITORY OF THE REPUBLIC OF BOLIVIA. THE DELEGATION OF THE EXECUTION OF A SENTENCE TO AUTHORITIES OF ANOTHER STATE WOULD HAVE TO BE THE SUBJECT OF CAREFUL STUDY AND OF TREATY.

H. WHEN ALL TRIAL PROCEEDINGS HAVE BEEN COMPLETED AND WHEN THE GUILTY HAVE COMPLIED WITH THE SENTENCES, A CERTIFICATE TO THIS EFFECT AND A COPY OF THE SENTENCE MAY BE OBTAINED.

THE RETURN OF PERSONAL DOCUMENTS AND PROPERTY SEIZED (SUCH
AS CAMERAS AND WATCHES) AS WELL AS CASH, IS THEN REQUESTED.
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